

GLOBALISATION AND INTERNATIONAL TRADE

Globalisation, International Trade and the harmonisation of labour law in Southern Africa

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The case for tuition in and research on labour standards in Southern Africa in the globalisation era

Globalisation has had the effect that countries compete for investment by multinational enterprises. This phenomenon may lead to a “race to the bottom” in the sense that labour standards are lowered to attract investment.

To combat this, the ILO adopted the Convention on Core Labour Rights in 1998. These core rights are the following:

- Freedom of association and the right to bargain
- Abolition of child labour
- Prohibition on forced labour
- Elimination of Discrimination

Member countries are bound to adhere to these core labour rights whether they have ratified the conventions on which the declaration is based or not. The Declaration is little more than that, since it cannot be enforced.

Southern Africa is one of the poorest regions in the world and need investment to combat poverty and unemployment. Countries may be inclined to disregard human rights in order to attract investment.

Other parts of the world have experience in guarding against the evils of the race to the bottom. The European Union rely on Directives for the harmonisation of legal systems of member countries of the European Union. Directives have proved to be less effective in recent times than in the past, due to countries at different levels of development becoming members of the European Union. This has lead to the emergence of so-called “soft law.” The method encourages the Open Method of Coordination in terms of which *inter alia* benchmarking and social dialogue are used to encourage countries to harmonise their labour standards. The social partners i.e. trade unions, employer organisations and governments of member countries are encouraged to be in constant discourse on labour standards,

The North American Free Trade Agreement and its side agreement on labour (NAALC), provides another model for ensuring the protection of workers in a globalised environment. There are no common labour standards to which the countries to the agreement (Canada, the USA and Mexico) are bound. Each country must adhere to its own labour standards. Complaint procedures against one country may be initiated in one of the other two countries. Any interest group may lay a complaint.

Countries in the Southern African region need to work together to protect especially vulnerable workers in the globalised context of international trade. Some countries in the region do not have the same high labour standards as South Africa and there is evidence of human trafficking, child labour and discrimination on the basis of especially race and sex. The standardisation of labour law in the region may contribute to the protection of the human rights of especially marginalised groups. Multinational enterprises (MNEs) tend to place a high priority on flexible work arrangements such as fixed term contracts, home work and workers being labelled “independent contractors.” These workers, bound to non-standards forms of employment contracts, are beyond the reach of labour law as they are often not regarded as employees. This poses one of the most serious challenges to the new emerging labour law

Southern Africa already has the basis of the SADC Charter which emphasises labour rights and includes adherence to the ILO’s Declaration on Core Labour Standards as one of its goals. It is clear that traditional harmonisation by way directives has failed in Europe. Soft law methods have taken the place of hard law. In Southern Africa a first goal may be to encourage governments in the region (by for instance using the SADC Charter as basis) to encourage member countries to at least ratify Conventions on the five core labour standards. A second goal could be to work towards upward harmonisation or standardisation of labour standards by means of the European Union’s Open Method of Coordination. This is based on soft law methods which rely to a great deal on dialogue, benchmarking, peer review, etc. South Africa with its normative Constitution and advanced labour laws may give guidance and support to set up these structures. In addition, it might be possible for a smaller group of countries in the region to conclude Free Trade Agreements with side agreements on labour law, based on the NAFTA model. When concluding bilateral or multi-lateral treaties (agreements) South Africa could lead the way by including appropriate labour clauses (social clauses).

The role of labour law has changed irretrievably. It is no longer possible to force employers by means of hard law to adhere to high labour standards. Employers will simply move their enterprise to a more “labour friendly” country. The protection of workers will now have to be done by the promotion of “soft law,” to top up the core labour standards which can form part of side agreements to trade agreements. Codes of conduct, consumers and shareholders could play a role in persuading MNEs to adhere to at least core labour standards. Innovative ways must be found to protect workers in non-standards types of contracts who do not qualify as employees and are outside the protective net of labour law.

The role that the University of Stellenbosch could play

The University of Stellenbosch can contribute to the promotion of human rights and appropriate labour standards in the Southern African region. A project that would both stimulate research and present tuition and facilitate community interactions could have the following components:

Tuition

The dissemination of knowledge and the training of role players on the changing nature and role of labour law by means of

- Seminars, workshops and conferences (serving the goal of academic discourse).
- Initialising short courses which could lead to a diploma for students/ labour practitioners, government officials (community interaction).
- Including at least one lecture in undergraduate courses on the topic (enriching course material in a topical manner).
- Procuring students and other role players from Africa to enrol for the different programmes labour law (contributing to the building of knowledge capacity in Africa), thereby empowering them to return to their countries to act as leaders in protecting human rights, *inter alia* by way of appropriate labour standards.
- Expanding the current LLM programme to include a module on globalisation and the development of international labour standards (enriching course material with a view to attracting more postgraduate students) – this lends itself to an interdisciplinary partnership with the Department of Economics in the Faculty of Economics and Management Sciences.
- Initiating an MPhil degree in Labour Law to accommodate students from Africa who do not have a law degree, but wish to study labour law (enriching course material with a view to attracting more postgraduate students and contributing to the building of knowledge capacity in Africa).
- Providing bursaries to students from other African countries (who could also include government officials and trade union leaders).

Research (enhancing research output)

- Studying the laws and social processes of Southern African countries with a view to:
 - Setting up a data base of the labour law systems of Southern African countries
 - Identifying the extent to which existing laws embody possibilities/opportunities to improve labour standards in the globalisation era
 - Developing harmonised labour standards to protect the human rights of especially marginalised workers
- Making contact with and building a network of academics and other role players in labour law in Southern African countries to stimulate dialogue

(Lecturers in the department of Mercantile Law have already done research in this field and would be able to continue publishing on the topic in a more comprehensive and systematic way. LLM students and doctoral students would be encouraged to do research on the topic.)

Community interaction

- Providing professional advice to Southern African companies and MNEs on the conclusion of bilateral and multi-lateral treaties which include labour agreements (increasing possibility of 3rd stream income)
- Assisting labour movements in promoting appropriate labour standards in business undertakings